

16. The surgical sponge of claim 15, wherein:  
the indicating means also indicates the type of sponge on which it is located.

17. The surgical sponge of claim 15, wherein:  
the indicating means comprises a RF tag attached to the sponge.

18. The surgical sponge of claim 17, wherein:  
the RF tag does not exceed one inch in diameter and 0.20 inches in thickness.

19. The surgical sponge of claim 18, wherein:  
the RF tag does not exceed three grams in weight.

20. (twice amended) Apparatus comprising a surgical sponge made of an absorbent material for absorbing fluids during surgery and an RF tag attached to the sponge for allowing the sponge to be detected by a non-optical scanner means, the RF tag including means for indicating information about the sponge, wherein

the surgical sponge has a dry weight before being used to absorb fluids, the dry weight of the sponge including the weight of the RF tag, and

the information about the sponge includes the dry weight of the sponge.

21. The apparatus of claim 20, wherein:  
the RF tag does not exceed one inch in diameter and 0.20 inches in thickness.

22. The apparatus of claim 20, wherein:  
the RF tag does not exceed three grams in weight.

#### REMARKS

Some of the claims have been amended. No new matter has been added to the application.

Applicant respectfully requests entry of the foregoing amendments, which simplify the issues for appeal.

Claims 1 and 3-14 were rejected under 35 U.S.C. § 103 as being unpatentable over Nosek in view of Sheehan, Cheesman et al., Fabian, Ghaem et al., and Ruiz et al. Applicant respectfully traverses this rejection.

In addition to the comments made in the prior response (which are hereby incorporated by reference as to all claims), applicant would like to emphasize the following.

Claim 1 is believed to be patentable because no reference of record discloses, and no reasonable combination of references suggests a container with an opening and a determining means for automatically determining the approximate dry weight of a sponge entering the container through the opening. It is only the present invention which discloses or suggests such a feature, which is important to the success of the present invention and which would not have been thought possible before the present invention was made. Claim 1 has been amended to specify that each sponge which the apparatus of that claim detects includes an indicating means for indicating the approximate dry weight of the sponge.

It would not have been obvious to use RF tags capable of being encoded with information about the sponges attached to the sponges at the time the invention was made because RF tags capable of being encoded with information about the sponges were prohibitively expensive at that time. Only the present inventors had the foresight to realize that, if the price of the RF tags capable of being encoded with information about the sponges came down enough, they could be used as disclosed in the present application.

Ghaem et al. is non-analogous art which one would not even consider looking to were it not for the teaching of the present invention. Even if one had all the other cited patents before him, it would not have occurred to one to search out a patent such as Ghaem et al. to solve the problem faced and solved by the present inventors - how to easily, accurately count surgical sponges and determine the amount of bodily fluids contained therein. However, even had one stumbled upon Ghaem et al. in his quest to solve the problem solved by the present invention, Ghaem et al. would not have helped him - nowhere in Ghaem et al. is there a suggestion that one should encode a RF tag with the approximate dry weight of a sponge and attach that RF tag to a sponge. Ghaem et al. nowhere suggests that the weight of an item to which an RF tag is attached

should be encoded in the RF tag. The statement on the bottom of page 4 of the Office Action "such as size and weight" is suggested in neither Ghaem et al. nor any other prior art of record - the suggestion for such a statement can be found only in the present application.

The Examiner has found many patents on similar devices, but none with the limitation of paragraph (d) of claim 1. Since this is such a crowded art, such a change, although seemingly minor to one not familiar with this art, is actually a major improvement which makes the apparatus of the present invention practical.

The present invention solves a long-felt but unsolved need - all prior art requires manual calculation or manual input to accurately determine blood loss. This is especially important when dealing with young patients, where a small inaccuracy of blood loss can be crucial. The limitation of paragraph (d) of claim 1 allows truly automatic calculation of blood loss.

Claim 3 further defines the present invention by specifying that the non-optical scanner means can read an indicating means on the sponges even when the indicating means is covered with blood or other body fluids. The apparatus of Claim 3 is advantageous because the indicating means will often be covered with blood or other body fluids, and thus the apparatus would not be nearly as useful without such a feature.

Claim 4 further claims a disposable bag. This is advantageous in that the manual handling of sponges is greatly reduced as compared to devices such as that of Nosek.

Claim 6 discloses a very important feature of the present invention which is not disclosed or suggested in the prior art - the apparatus further comprises means for automatically determining the type of sponge which enters the container means, and the first display means includes means for indicating the number of each different type of sponge which has entered the container means through the opening since the predetermined time. The device of Nosek cannot automatically determine the type of sponge which enters the container means of Nosek - rather, the operator must

press a button each time a different type of item enters the container means.

Claim 10 is similar to claim 1 and is believed to be patentable for the same reasons that have been advanced in support of claim 1. Specifically, claim 10 claims a system including the apparatus of claim 1 and the sponges with the indicating means thereon.

Claim 11 is similar to claim 6 and is believed to be patentable for the same reasons that have been advanced in support of claim 6.

Claim 14 is similar to claim 3, and is believed to be patentable for the same reasons that have been advanced in support of claim 3.

Claims 15-22 were rejected under 35 U.S.C. § 103 as being unpatentable over Fabian ('095) in view of Ghaem et al. Applicant respectfully traverses this rejection.

Applicant again respectfully submits that Ghaem et al. is non-analogous art to which one would not look when faced with the problems that the present invention solves.

Further, Applicant respectfully submits that, at the time the invention was made, the type of RF tag which would allow accurate inventory control would have been too expensive to add to each sponge just to improve inventory control, so even had one looked to Ghaem et al., he would not have found the present invention to have obvious at the time that the present invention was made. It is only when one realizes that having information about the sponge will allow one to use the sponge/RF tag combination in a device similar to that disclosed in Nosek that one would be willing to go to the expense of using an RF tag capable of providing information about the sponge, instead of using a cheaper RF tag (such as that of Fabian) which simply allows detection of the sponge. One would not realize this without the assistance of the present patent application. Thus, it is respectfully submitted that these claims are not rendered obvious by Fabian and Ghaem et al. and are thus allowable.

The device of Fabian is complementary to the apparatus of the present invention - it could be used with the apparatus of the present invention, but it could not replace that apparatus or render it obvious.

Further, as discussed above, no reference of record even vaguely suggests that one should attach to a surgical sponge an indicating means readable by a non-optical scanner means which indicates the dry weight of the sponge.

Claim 20 has been amended to include the limitations of claim 15, and is believed to be allowable for the reasons advanced in support of claim 15.

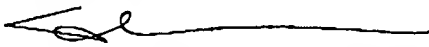
Applicant respectfully submits that the application is in condition for allowance. A Notice of Allowance is hereby respectfully requested. However, Applicant would consider further amending the claims if the Examiner has any suggested changes.

Should the Examiner feel that a telephone conference would advance the prosecution of this application, he is encouraged to contact the undersigned at the telephone number listed below.

Applicant respectfully petitions the Commissioner for any extension of time necessary to render this paper timely.

Please charge any fees due or credit any overpayment to Deposit Account No. 16-2435.

Respectfully submitted,

  
Charles C. Garvey, Jr., Reg. No. 27,889  
Seth M. Nehrbass, Reg. No. 31,281  
PRAVE, HEWITT, KIMBALL & KRIEGER  
1177 West Loop South, 10th Floor  
Houston, Texas 77027  
(504) 835-2000  
Fax: 504-835-2070  
Attorneys for Applicant

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